

General terms and conditions

General sales, delivery and payment conditions of the private limited liability company Holonite B.V.

Article 1. General

1. The following general sales, delivery and payment conditions apply to all offers and/or agreements and/or contracts concluded by or on behalf of Holonite B.V. for or with third parties. These general sales, delivery and payment conditions are filed at the Registry of the Court Zeeland-West-Brabant, location Middelburg, and can be found on the website of Holonite B.V. (www.holonite.nl). The general sales, delivery and payment conditions of the client do not apply.
2. Deviation from these general sales, delivery and payment conditions is only possible after written agreement signed by or on behalf of Holonite by its duly authorised representative.
3. These general sales, delivery and payment conditions are deemed to apply to each additional and/or subsequent agreement concluded between Holonite B.V. and third parties, irrespective of the manner in which the agreement is concluded, if these conditions have been declared applicable prior to the legal relationship between Holonite B.V. and the third party.

Article 2. Offers, concluding an agreement

1. An offer made by or on behalf of Holonite is, unless expressly agreed otherwise, binding for a period of two months. If no agreement is concluded within this period, the offer shall be deemed to have lapsed.
2. Any agreement with Holonite B.V. is only established by the written acceptance by the duly authorised representative appointed by Holonite B.V., as well as delivery and unconditional acceptance of the offer made by Holonite B.V., unless it contains a still to be fulfilled condition precedent.
3. No rights can be derived from dimensions, models, prices and/or other information of a general nature captured in catalogues and/or flyers and/or information materials. These materials are provided by or on behalf of Holonite B.V. without obligations and under reservation.

Article 3. Prices

1. Unless explicitly stated otherwise, all prices stated and/or confirmed by or on behalf of Holonite B.V. do not include VAT. These prices are based on the level of prices of raw materials, wages, taxes and charges, as well as any other cost factors, which were applicable at the time the price was stated and/or when the offer or agreement was concluded. If the cost price of the product offered and/or sold by Holonite B.V. increases due to changes in the aforementioned cost factors, regardless of whether the circumstances were foreseeable at the conclusion of the agreement, Holonite B.V. is entitled to increase the offered or agreed price in accordance with any applicable statutory regulations. This power of Holonite shall only apply to the unfulfilled part of the contract for any already concluded agreements.
2. If the prices referred to in the preceding paragraph have been calculated partly on the basis of drawings approved by or on behalf of the client of Holonite B.V., based on which the materials and sizes and quantities have been prepared, Holonite B.V. reserves the right to adjust already confirmed prices and possibly charge the costs of unnecessary deliveries and/or work if these drawings are found to be inaccurate and/or incomplete after the conclusion of the agreement which must lead to adjustments to the material preparation, even if no changes have to be made to the specification of the materials to be delivered by Holonite B.V.
3. The price increases referred to in this Article must be communicated to the client of Holonite B.V. within three months after the date on which they occur, on pain of forfeiture of the right of Holonite B.V. to appeal to these price increases.
4. If the price increase as a result of price-increasing factors as referred to in this article is, possibly jointly, more than 10% of the original value, the client of Holonite shall have the right to terminate the agreement within 14 days of the notification of the price increase by or on behalf of Holonite B.V., unless this would be unreasonable given the circumstances. Termination on grounds of this article cannot lead to a right to compensation for any damages by either Holonite B.V. or the client.
5. Discounts granted to the client by or on behalf of Holonite B.V. apply only to the corresponding agreement and do not entitle the client to any other discount for subsequent agreements, even if these agreements are the direct result of the agreement for which the corresponding discount arrangement has been made.

Article 4. Delivery and shipment

1. Each delivery term indicated by Holonite B.V. is a target term, unless otherwise expressly stated in the agreement or the offer. Holonite B.V. will endeavour to achieve this target date, but shall not be liable to pay any damages if the target date is not met, unless the client demonstrates that Holonite has failed in the aforementioned best efforts obligation. Exceeding the delivery term does not entitle the client to dissolve the agreement.
2. If delivery ex works or warehouse of the client of Holonite B.V. or its customer has been agreed, Holonite B.V. is only required to deliver the goods as close as possible to the delivery location as possible and/or reasonable on a paved road with the chosen mode of transport. Unloading shall in these cases be done for the account and risk of the client of Holonite B.V., unless otherwise agreed in writing. If the personnel staffing the chosen means of transport provide help, this shall always be voluntarily and outside the responsibility and/or liability of Holonite B.V. If unloading fails to take place, or fails to take place on time, due to circumstances not attributable to Holonite B.V., Holonite B.V. shall be entitled to recover any consequential loss from its client.
3. If delivery ex factory or ex storage of Holonite B.V. has been agreed, Holonite B.V. shall ensure the loading in or on the vehicle used for the transport.
4. If Holonite B.V. helps or assists with the installation of the sold materials, this shall take place under the supervision, responsibility and accountability of its client, unless Holonite B.V. has been commissioned for the assembly and accepted this. Holonite B.V. is entitled to charge the related costs on an hourly basis to its client.
5. Unless otherwise agreed, Holonite B.V. is entitled to deliver a contract in parts and separately invoice the related partial payments to its client.
6. If certain packaging parts are required as described in the catalogue or other written information provided by Holonite B.V., Holonite B.V. shall have the right to complete the orders up to the packing unit.
7. Holonite B.V. is entitled to charge the extra costs incurred by itself and/or third parties due to special instructions provided by its client.
8. The client of Holonite B.V. is liable for any (additional) costs and damages incurred by Holonite B.V. as result of a circumstance at the account and risk of the client due to which Holonite B.V. was unable to deliver the goods and/or retrieve complained goods timely and/or completely and/or without incurring extra costs. Each liability of Holonite B.V. for damages of any nature whatsoever incurred by the client occurs as a result of any event described above is expressly excluded.

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Article 5. Acceptance and complaints

1. All goods delivered by or on behalf of Holonite must be checked immediately on arrival by or on behalf of the client, and in case of delivery ex work or warehouse immediately after arrival of the transport vehicle, before or during the unloading, and in case of delivery ex factory or warehouse of Holonite B.V., immediately before or during the loading of the transport vehicle at the factory or storage space.
2. Accepting the goods by or on behalf of the client of Holonite B.V. without protests shall constitute the final acceptance thereof, without prejudice to the right of the client to make complaints about defects of the product which could not have been found at the moment of delivery, provided that this complaint shall be made to Holonite B.V. in writing no later than five days from the moment the client could have detected these defects, on pain of forfeiture of that right.
3. Notwithstanding the above provisions, the client of Holonite B.V. shall be entitled, and even required if this could lead to limitation of damages, to receive defective goods under protest, of course while retaining its right to compensation.
4. Inspecting the quantity of the delivered goods is the responsibility of the client of Holonite B.V. If no complaints are made about the delivered quantity on the day of receipt, the quantity on the bill of lading or consignment note shall be binding. Goods delivered by or on behalf of Holonite B.V. which have been processed by its client are no longer open to complaints, without prejudice to the rights of the client of Holonite B.V. related to any hidden defects. In case of defective delivery by Holonite B.V., its client shall only be entitled to claim replacement of the defective goods within a reasonable time and with compensation of the costs incurred by the client for the transport of the defective goods.
5. Holonite B.V. is only held to accepting and refunding the returned goods if it has agreed to this in writing in advance. This approval shall only be given if the goods that are to be returned are in the same state as they were at the moment of the original delivery.
6. Appealing to its right to complaints does not have an effect on the payment obligations of the client of Holonite B.V. and it does not entitle the client to claim suspension and/or compensation.

Article 6. Warranty

1. Holonite B.V. guarantees the soundness of the materials delivered to the client where necessary.
2. Holonite B.V. only provides written warranties on window sills and its façade products, such as other wall finishes, alternating stone bands and ornaments on request. No written warranty shall be issued for the other products. The written request and the invoice and the accompanying packing slip are sufficient to be eligible for the warranty. Holonite B.V. provides a ten year warranty starting on the date of delivery. The scope of the warranty shall for the entire duration be complete compensation of the costs related to the required repair and/or replacement.
3. The warranty only covers the costs incurred by Holonite B.V. for repairs to or replacement of the defective product. Any liability of Holonite BV for other costs or damages is expressly excluded.
4. The warranty period of products repaired and/or replaced under the warranty shall not be renewed and/or extended based on these repairs and/or replacements. The Warranty shall expire if repairs and/or replacements have been made by other parties without the prior express approval of Holonite B.V.
5. The warranty is based on and limited to the state and knowledge of technology at the moment of manufacturing. The warranty shall only apply under the condition of proper and regular inspection and maintenance by and for the account of the client. Info sheets and maintenance instructions of Holonite B.V. must be observed by the client. This warranty shall not include defects and/or costs:
 - that are the result from and/or arise from incorrect and/or improper use and/or use not in accordance with the function of the Product;
 - of which the existence could or should have been known the client at the moment of delivery or which have not been communicated to Holonite B.V. in writing within a reasonable period after delivery;
 - that are result of neglect and/or lack of and/or incorrect maintenance to the products and/or items in which the products have been processed;
 - that are the result of normal wear and tear of the products and/or to the items in which the products have been processed, such as but not limited to discolouration and/or weathering of the products due to weather conditions and environmental circumstances;
 - that are the result of actions contrary to the processing or assembly requirements of Holonite B.V.;
 - that are the result of changes made to the product without the express and prior written permission of Holonite B.V., including repairs and/or adjustments, whether or not in a technical sense;;
 - that are the result of force majeure;
 - that are the demonstrable result from causes attributable to the client and/or third parties, as determined by the informed judgement of an expert appointed by Holonite B.V., for example due to errors and/or omissions in the constructions in which the products are applied;
 - that relate to minor colour and/or size deviations within tolerances to be determined in consultation with the client.
 - The warranty is transferable to rightholders for the entire duration of the warranty of the client.
6. The warranty means that Holonite B.V. shall repair the products. Holonite B.V. must be given the reasonable opportunity to do this. Costs incurred by the client which are not directly attributable to the product shall not be for the account of Holonite B.V.
7. Other warranty conditions apply to products from the Urban range, depending on the product. These must be agreed separately in writing.

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Article 7. Liability

1. Holonite B.V. only accepts liability for the loss suffered by its client to the extent that it is a direct result of an attributable failure to perform in the fulfilment of the obligations for Holonite B.V. under the agreement concluded with the client and/or a tort towards the client, if and to the extent this liability for damages is covered by the liability insurance of Holonite B.V. In this case, the liability of Holonite B.V. shall be limited to the amount paid under this insurance.
2. If the liability insurer of Holonite B.V. does not pay for any reason, or if the damage is not covered by this liability insurance, the liability of Holonite B.V. shall in any case be limited to the amount of the agreement related to the failure which led to the liability of Holonite B.V., however with a maximum of € 25,000.
3. Each liability of Holonite B.V. for indirect loss, including consequential loss, loss of profits and loss due to business stagnation, is expressly excluded. Holonite B.V. shall also never be liable for loss resulting from force majeure.
4. If a client of Holonite B.V. in the course of its normal business operations sells items delivered/sold by Holonite B.V. to a third party or creates new products which include these Holonite B.V. products, the client shall be required to conclude and maintain adequate insurances against the risk of product liability ex Section 6:185 DCC.

Article 8. Force majeure

1. The delivery and other obligations of Holonite B.V. are suspended during a period of force majeure.
2. If the period during which the fulfilment of the obligations of Holonite B.V. is not possible, lasts longer than two months, the parties are entitled to terminate the agreement without judicial intervention and without any right to compensation.
3. If Holonite B.V. has already performed part of its obligations or is only able to partially meet its obligations at the start of the period of force majeure, it shall be entitled to separately invoice the already delivered products or the deliverable part and the client shall be required to pay this invoice as if it were a separate agreement or contract.
4. Force majeure within the meaning of this article shall mean circumstances that prevent the fulfilment of the commitment that are not attributable to Holonite B.V. This includes strikes, transport disruptions as well as 'acts of God'; everything that prevents the fulfilment by Holonite B.V. or its suppliers.
5. Holonite B.V. also has the right to invoke force majeure if the non-attributable circumstances that hinder the fulfilment of the commitment occur after Holonite B.V. should have fulfilled its obligations.

Article 9. Intellectual Property Rights

1. Drawings, models, moulds, assembly instructions and tools provided or created by Holonite B.V. for/to its client shall remain the property of Holonite B.V. at all times, even when Holonite B.V. has charged costs to its client for the creation or provision. Holonite shall at all times be entitled to claim restitution of its property from the client, unless expressly determined otherwise in the agreement.
2. Holonite B.V. does not grant a license to its client and/or third parties with respect to the aforementioned intellectual property rights, unless agreed otherwise. Its client may therefore not use the drawings, models, moulds, assembly instructions and tools which are the intellectual property of Holonite B.V. for its own benefit or the benefit of third parties.
3. If and to the extent the client of Holonite has used the intellectual property rights of Holonite B.V. without being entitled to do so, it shall forfeit a penalty of €10,000 per violation and €1,000 for each day that the violation continues, without prejudice to the right of Holonite B.V. to also claim full compensation from its client if the actual loss suffered is higher than the forfeited penalty.

Article 10. Reservation of ownership

1. Without prejudice to the provisions of article 4 (delivery), the delivered goods remain the property of Holonite B.V. until full payment of all the client owes to Holonite B.V., on the basis of whatever grounds, including any future claims on the client under similar agreements and including interest and costs. The client may not transfer the ownership of these goods to third parties or encumber them with corresponding security rights, including property rights. The client is required to immediately inform Holonite B.V. in writing if third parties assert rights on goods, including attachment, on which a reservation of ownerships rests pursuant to this article, under forfeiture of a penalty of a fine of 10% of the unpaid portion of the principal.
2. If the client fails to fulfil any obligation under this agreement towards Holonite B.V., Holonite B.V. shall be entitled to retrieve the goods delivered under reservation of ownership without any notice being required. If Holonite makes use of its reservation of ownership, the agreements shall also be dissolved without judicial intervention being required, without prejudice to the right of Holonite B.V. to claim compensation for loss and lost interest. The claim of Holonite B.V. on the client in respect of these goods shall be reduced by the market value of the repossessed goods. The market value shall at least be equal to the purchase price which is realised by the private or public sale of the repossessed goods to third parties, such as the discretion of Holonite B.V.
3. Holonite B.V. is entitled to recover as many goods from the client until the full claim of Holonite B.V., being the referred to sales revenue from the private or public sale of the repossessed goods, including costs, (statutory trade) interests and any compensation, has been met.

Article 11. Payment conditions

1. Payment of invoices must take place within 30 days of the invoice date, unless expressly agreed otherwise in the agreement.
2. Holonite B.V. is entitled to immediately invoice the delivered goods, even when the delivery is only part of what has been sold in the agreement.
3. Holonite B.V. is entitled to demand payment from the client for the purchased goods which are not accepted in violation of the obligation resting on the client.
4. Holonite B.V. is entitled to charge a credit limitation surcharge of 2% on the invoice amount excluding VAT. The client is entitled to deduct the above credit limitation surcharge from the total invoice amount when payment is made within the payment period.
5. The date of payment shall be the date on which the amount is credited to the bank account of Holonite B.V.

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6. The client shall be in default by the mere expiry of any payment period without notice of default being required. In the event of late payment, the client shall owe the statutory commercial interest ex Section 6:119a DCC as default interest.

7. Expenses of return bills or receipts, protests, judicial and extrajudicial collection costs or other costs incurred due to the late payment shall be borne by the client. The extrajudicial collection costs are at least 15% of the outstanding invoice amount and any interest due, without prejudice to the power of the court to determine these costs in accordance with the Standardisation Collection Costs Decree.

8. The client may not settle its payment obligations under this agreement in any way. Any settlement by the client is expressly prohibited.

9. The client is not allowed to suspend payment based on alleged defective deliveries.

10. Holonite B.V. is entitled to, in the event the client is in default in respect of any payment, terminate or suspend further implementation of the agreements, without prejudice to the right of Holonite B.V. to claim corresponding compensation.

11. All costs related to the bank payment shall be borne by the client.

12. If after payment of the principal it becomes clear that additional costs have been incurred, these shall be charged to the client.

Article 12. Intellectual Property Rights

1. Holonite B.V. has the right to demand adequate security from the client for payment of the outstanding invoice amount if the client fails to pay the invoices within the set payment period.

2. If Holonite B.V. undertakes to deliver a product differing from its default range or if deviating work is required in its production at the instructions of the client, the client shall be held to indemnify Holonite B.V. against claims of third parties for violation of intellectual property rights.

3. Dutch law is applicable to all agreements, offers and contracts to which Holonite B.V. is a party.

4. All disputes and claims between Holonite B.V. and the client shall be heard by the competent court in the district of Zeeland-West-Brabant, location Middelburg. Holonite B.V. is also entitled to call on arbitration, in which case the client shall be informed in writing.